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Committee on Economic, Social and Cultural Rights
Fifty-seventh session

Summary record of the 3rd meeting*
Held at the Palais des Nations, Geneva, on Tuesday, 23 February 2016, at 10 a.m.

Chair: Mr. Sadi

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* No summary record was issued for the 2nd meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Initial report of Namibia (E/C.12/NAM/1; E/C.12/NAM/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Namibia took places at the Committee table.*

2. **Ms. Böhlke-Möller** (Namibia), introducing the initial report of Namibia (E/C.12/NAM/1), said that, over the 26 years since independence, Namibia had established a good track record of political stability, prudent macroeconomic management, moderate economic growth and natural resource conservation. However, not enough jobs had been created and the country continued to be plagued by prolonged periods of drought as a result of climate change, which added to the challenges faced by the Government in addressing the interconnected problems of poverty and inequality.

3. The Government considered that the protection and promotion of economic, social and cultural rights on an equal basis with civil and political rights allowed for the realization of the right to development; failure in that respect risked creating an imbalance leading to a multitude of problems that would hinder the attainment of the desired outcomes of the 2030 Agenda for Sustainable Development. Inclusive social and economic development, environmental sustainability and peace and security were goals that the Namibian Government wanted to achieve and maintain.

4. **Mr. Schrijver** (Country Rapporteur) said that, while he welcomed the State party's view that economic, social and cultural rights were essential for the advancement of other rights, it was inconsistent that those rights were not recognized in the Constitution. He therefore sought clarification as to whether Namibia considered the rights enshrined in the Covenant to be fundamental and legally binding human rights or merely principles that served as guidance for State policy. In view of reports about the shortcomings of the current Ombudsman, he asked whether the State party intended to establish a national human rights institution that adhered to the Paris Principles.

5. The fact that the Constitution and other national laws referred to the country's many indigenous peoples as "marginalized communities" had the effect of diminishing the legal protection accorded to those peoples in respect of their traditional lands, resources and cultural identity. He wished to know whether Namibia acknowledged the developments that had taken place in international human rights law regarding indigenous peoples, especially those set out in the United Nations Declaration on the Rights of Indigenous Peoples of 2007, and whether it would consider reforming its legislation in order to strengthen the rights of indigenous peoples in Namibia.

6. He invited the delegation to comment on the lack of protection under Namibian law for non-heterosexual persons and on the criminalization of homosexuality. In view of the State party's dubious distinction as the country with the highest level of socioeconomic inequality in the world, he would appreciate an account of the structural factors that were considered to be responsible for that situation. He expressed concern at the fact that Namibia advocated a public policy of free and compulsory education but that education, even at the primary level, was not free at all, and in many regions, not compulsory either.

7. **Mr. Atangana** asked whether, in the case described in paragraph 1 of the State party's reply to question 1, the Namibian Supreme Court decision to grant legal aid to

the defendants had been duly enforced and whether that case had established a precedent for the provision of such aid to defendants as a general rule. He wished to know what had been done to raise awareness among judicial officers of the enforceability of economic, social and cultural rights under the Covenant and requested clarification of the hierarchical relationship between the customary and statutory legal systems operating in Namibia.

8. **Mr. De Shutter** requested a full account of the legal protection accorded to indigenous peoples in relation to the land they occupied and on which they depended for their livelihood. In particular, he wished to know the extent to which the National Resettlement Policy had or had not benefited the San community. He would be interested to know what progress had been made in following up the 2012 recommendations of the Special Rapporteur on the rights of indigenous peoples to address the poor quality of the land provided to the San and the lack of financial and technical support needed to ensure the establishment of viable communities.

9. **Ms. Bras Gomes** asked whether the case referred to in paragraph 1 of the replies to the list of issues was the only one concerning Covenant rights that had been brought before the courts. She sought clarification as to whether the statement made in paragraph 3 of the replies referred solely to the legal aid issue or more broadly to the possibilities for the substantive implementation of economic, social and cultural rights. She wished to know whether the State party's plans to develop new legislation for the prohibition of discrimination on a variety of grounds, which were described in paragraph 16 of the replies to the list of issues, would take the form of specific pieces of legislation on each ground. In her experience, it was better to adopt a framework law that referred to all the grounds and then to enact more specific implementing legislation or regulations. She asked what structural obstacles there were to the implementation of the 2010-2020 National Gender Policy and whether one obstacle might be a lack of awareness or understanding of the law on the part of women, which would be relatively simple to overcome. She requested disaggregated data on how public expenditure for education and housing had evolved, as that would illustrate how different groups in Namibia were protected under the Covenant.

10. **Mr. Kedzia** requested additional information on the status, composition and functions of the Inter-ministerial Committee on Human Rights and International Humanitarian Law mentioned in paragraph 2 of the State party's report. According to paragraph 70 of the report, all human rights instruments ratified or acceded to by Namibia were part and parcel of its domestic law and should be duly enforced. That did not seem to correspond with the statement made in paragraph 138 that there were few cases involving constitutional interpretation owing to the fact that Namibia had a relatively recent Constitution. He was especially concerned that only a few of the economic, social and cultural rights protected by the Covenant were included in the Bill of Rights, which was set out in chapter 3 of the Constitution, while the majority were addressed in article 95 of the Constitution under the heading "Principles of State Policy". That seemed to indicate that a distinction was made between economic, social and cultural rights on the one hand and civil and political rights on the other. He asked whether the provisions of article 95 of the Constitution were enforceable and whether there were any instances in which the subjective rights enumerated in that article had been interpreted by the courts. If not in either case, there was reason to believe that there was a disparity in the constitutional protection afforded the two categories of rights.

11. It was unclear from the absolute figures given in paragraph 28 of the replies to the list of issues for the number of Customary Land Rights Certificates granted whether the process had met the needs of the persons concerned. The data would be more meaningful if they were expressed in the form of percentages. In the light of the

statement made in paragraph 25 of the report that the Married Persons Equality Act of 1996 had made broad and sweeping innovations to the status of Namibian women, he asked if the Act had had a practical impact on the situation of women under customary law practices that related to marriage.

12. **Mr. Pillay** asked what efforts had been made to guarantee the independence of the judiciary and to ensure that individuals who had suffered violations of their economic, social and cultural rights could refer their cases to the Southern African Development Community Tribunal.

13. **Mr. Uprimny** asked whether the Government intended to bring domestic legislation fully into line with the Covenant and recognize the rights of indigenous peoples. Similarly, he wished to know what measures had been adopted to combat discrimination against lesbian, gay, bisexual and transgender persons and guarantee their access to the health-care system, particularly sexual and reproductive health services. Information on steps taken to eradicate gender inequality in customary law would also be welcome. Lastly, he asked what efforts had been made to address socioeconomic inequality.

14. **Mr. Abdel-Moneim** said he would welcome information on any concrete steps taken to promote self-sustaining development and establish an effective national economic development policy.

15. **Ms. Bras Gomes** asked what programmes had been introduced to tackle the high levels of unemployment in rural areas and to reduce long-term unemployment, particularly among the most vulnerable groups such as women and young persons. She also wished to know whether the Government intended to introduce a national minimum wage and raise the existing minimum wages in the agricultural, construction and security sectors. Information on measures taken to ensure that occupational health and safety regulations were upheld in the mining and maritime industries would also be welcome.

16. Concerning the right to social security, she asked the delegation to provide additional information on the establishment of the Retirement Pension Fund and the strengthening of private arrangements to supplement social security schemes referred to in paragraphs 209 and 211 of the report respectively. Lastly, she wished to know whether self-employed workers were eligible to register with the compulsory national insurance system and whether paternity leave would be made available to fathers.

17. **Mr. Kedzia** asked whether the State party had received international development assistance to address the persistently high unemployment rates in the country. He also wished to know whether unemployed persons had access to social security assistance.

18. **Mr. Ribeiro Leão** asked whether the Government intended to adopt specific legislation to protect the right to collective bargaining. He also wished to know what steps had been taken to define the "essential services" whose staff were prohibited from exercising the right to strike, as described in paragraph 187 of the report.

19. **Mr. Martynov** asked whether there were plans to conduct the national labour survey on an annual basis and collect data on employment disaggregated by employee age. He also wished to know whether the Government intended to update its current national employment policy, which dated from 1997. He would welcome information on unemployment rates among persons with disabilities, any measures the Government was taking to address the problem and whether discrimination on grounds of disability was prohibited. He asked whether the proposed SME Bank had indeed been established, how many loans it had granted and what their impact on the creation of small, medium-sized and microenterprises had been. He wished to know whether

the country had a labour inspectorate with adequate human and financial resources, and, if so, whether it had sufficient power to enforce labour laws. Did labour legislation apply fully in any free export zones in the country? Lastly, he would welcome information on the specific measures adopted to regularize the informal sector and whether any categories of informal workers enjoyed access to social protection and assistance.

20. **Mr. Uprimny** asked whether the Government had discussed policies to tackle the problem of rising unemployment, which was perhaps caused by the country's focus on extraction industries, which did not require a large workforce.

21. **Mr. Schrijver** said he would be interested to know the situation of the trade unions, both in law and in practice, what proportion of workers were union members and whether the Government was cooperating with trade unions to improve conditions and wages in the mining sector.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

22. **Mr. Ndjoze** (Namibia) said that the Inter-ministerial Committee on Human Rights and International Humanitarian Law comprised representatives of nine ministries and was chaired by the Ministry of Justice. It drafted periodic reports for the treaty bodies, sharing them with non-governmental organizations prior to submission, and coordinated efforts to address those bodies' concluding observations. Under the Constitution, all international agreements ratified by Namibia were automatically incorporated into domestic law, with any necessary legislative amendments having been made prior to ratification. However, the Covenant had yet to be invoked before the courts.

23. The fact that some economic, social and cultural rights were included in the Bill of Rights while others were enshrined in the Constitution did not imply a hierarchy. The implementation of some economic, social and cultural rights was expensive, and they had therefore not been included in the Bill of Rights, although they could be enforced by a court order. For example, legal aid had not been included in the Bill of Rights, but the Supreme Court had ruled that it must be granted to those who could not afford to instruct counsel in order to ensure that they had a fair trial. That ruling meant that the Director of Legal Aid was often required to grant it, even when applicants were not in financial need.

24. **Ms. Pickering** (Namibia) said that the Ombudsman had been granted A status under the Paris Principles on three consecutive occasions and thus functioned as the country's national human rights institution.

25. **Mr. Dyakugha** (Namibia) said that all inhabitants of Namibia were equal under the Constitution and considered "indigenous" by the Government. However, some groups, such as the San community, were deemed to be "marginalized communities" and benefited from targeted Government programmes. The Government had passed an act requiring claims to communal land to be registered. However, few marginalized communities had done so, despite efforts to raise awareness of the new requirements. The Government granted land to marginalized communities and provided assistance that included farming equipment, livestock and infrastructure. Unfortunately, that land tended to be of poor quality because the Government purchased land only from willing sellers, who were unlikely to sell productive farms. Consultation with marginalized communities had been undertaken since 2005, when the then Deputy Prime Minister had toured the country and spoken with community and traditional leaders as part of a development project. Such high-level consultation had become routine and was now carried out by the Deputy Minister of Veteran Affairs and Marginalised People.

26. Namibia had received recommendations from several international forums regarding the lesbian, gay, bisexual and transgender (LGBT) community. Although the country did not accept those recommendations, LGBT persons' rights were protected under the Constitution, article 10 of which prohibited discrimination of any kind, and they were not prosecuted as long as their activities took place in private. Marriage for LGBT persons was a sensitive issue in Namibian society, which was very conservative.

27. **Ms. Pickering** (Namibia) said that the law criminalizing sodomy predated independence and was still in effect. Consultation and a possible referendum on decriminalization would take time in a conservative society such as Namibia. Despite the law, there were concerns regarding the spread of HIV and other sexually transmitted infections among gay men, particularly in institutions and places of deprivation of liberty. The Minister of Health and Social Services had therefore launched a consultation process on the distribution of condoms in prisons, and it was hoped that placing a health issue, rather than the decriminalization of sodomy, at the centre of the debate would allow progress to be made.

28. Customary law and the common law inherited from the period before independence were both sources of the Namibian legal system. The Constitution did establish a hierarchy, however, and customary law was recognized only to the extent that it did not conflict with any provision of the Constitution or civil law. On more than one occasion, the courts had declared provisions of customary law to be unconstitutional. The Community Courts Act provided for the adjudication of disputes in traditional courts. The decisions of those courts could be appealed before magistrates' courts. In the event of a failure to comply with an order issued by a traditional court, the case could be registered with a magistrates' court and enforced through that court's procedures.

29. The income inequality in Namibia was due in part to the situation inherited at the time of independence. The country was currently working to move forward from an era of peace and stability to an era of economic emancipation and prosperity for all. Inequality in access to education had been so thoroughly addressed that most government schools were facing a problem of over-enrolment. All Namibian citizens had access to all public services and institutions, which were guided by the same laws and policies and provided services at the same level of quality. It was true, however, that differences in the level of infrastructure were seen when comparing different regions or when comparing urban with rural areas. Again, that situation had been inherited at the time of independence. The Government had focused its efforts on creating infrastructure in areas where it had been lacking, but as a result it had not always been able to properly maintain the existing infrastructure in other areas.

30. It was true that Namibia had one of the worst Gini coefficients in the world. At the same time, in 2009 it had been granted the status of upper middle income country on the basis of its gross national income per capita, which was not necessarily a true reflection of the economic situation in the country. As a result of that classification, many international social partners had withdrawn their support, which made it difficult for the Government to fully realize the Covenant rights for all its citizens. Nevertheless, much had been done to reduce the inequality gap and raise the general standard of living. The statistical data showed that, since independence, there had been a significant drop in the poverty level and significant increases in literacy, access to electricity, school enrolment and other indicators.

31. A number of tax proposals, such as environmental taxes, had been put forward for the 2015/16 budgetary year to help alleviate poverty and income inequality. As for public expenditures, the total national budget was 35 billion Namibia dollars. Of that amount, 18 per cent was allocated to education, arts and culture, 12 per cent to

defence, 10 per cent to health and social services, 8 per cent to law enforcement, 7 per cent to transport, 7 per cent to higher education, training and research, 6 per cent to finance, 5 per cent to urban and rural development, 4 per cent to poverty eradication and social welfare, and 24 per cent to various other expenditures. Her delegation would provide further information in the form of disaggregated data at a later time.

32. **Ms. Bras Gomes** said that she looked forward to receiving the disaggregated data, and emphasized its importance for the Committee's work. She asked the delegation to provide an assessment of the National Gender Policy, including information on the obstacles hindering its implementation and on how those might be overcome. Pointing out that not all Covenant rights were subject to progressive realization, she wished to hear the delegation's views on the State party's core obligations under the Covenant. She noted the Government's plans to adopt legislation on various types of discrimination but wished to know whether a framework law that would cover all forms of discrimination would be adopted.

33. **Mr. Abdel-Moneim** said that there was a link between income inequality and social justice. While some viewed taxes as merely a source of income that States parties could use to finance the fulfilment of their obligations, in his view, developing countries should have more ambitious plans for their taxation systems and should use them as a way of redistributing income, with a view to achieving social justice.

34. **Mr. Uprimny** said that, while he understood the cultural factors influencing the decision not to decriminalize sodomy and homosexuality, the State should play a leading role in working to overcome the prejudices in society. He asked whether the Government planned to recognize indigenous peoples as such, which would entail recognition of their right to self-determination, or whether they would merely be recognized as disadvantaged communities. He noted the significant reduction in poverty in Namibia in recent years but pointed out that efforts to reduce income inequality had been less successful. He therefore wished to know whether there were any specific measures in place to address that problem. He wished to hear the Government's position on establishing a basic income grant.

35. **Mr. Schrijver** said he would like to know why there had not yet been any court cases involving claims of violations of Covenant rights. He wondered whether lawyers, judicial officials and the general public were aware that those rights were, in fact, justiciable. More generally speaking, he wished to know about the human rights training provided for various professional groups.

36. **Ms. Pickering** (Namibia) said that the overarching goal of the National Gender Policy was to achieve equality between the sexes and the empowerment of both men and women. Since the 2015 elections, Namibia now had the third highest percentage of female elected political representatives in Africa and the twelfth highest in the world. Her delegation would provide further information on the implementation of the National Gender Policy once it had consulted with the Ministry of Gender Equality and Child Welfare.

37. **Mr. Dyakugha** (Namibia) said that the Government had approved the ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and a white paper on the subject had been presented to the Cabinet. The Government recognized that indigenous communities had special needs with respect to their development. As for self-determination, however, Namibia was a unitary State with three levels of government, and indigenous communities were already represented at the local and regional levels. The President had issued very clear statements about his intentions to eradicate poverty by means of, inter alia, a solidarity tax and other taxation measures.

The meeting rose at 1 p.m.